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ment in order to prevent injury to the plaintiff's business by unfair competition. *Apollo Bros. v. Perkins*, 207 Fed. 530. See HOPKINS, TRADE MARKS, 2 ed., § 19. It is immaterial, therefore, whether the deceptive similarity is in the sound or appearance of the name, or in the shape or color of the package. *Welsbach Light Co. v. Adams*, 107 Fed. 463. Moreover, an intent to injure the plaintiff need not be shown ordinarily. See *Singer Machine Mfg. Co. v. Wilson*, L. R. 3 A. C. 376. But the presence of such a fraudulent intent will induce the courts to grant injunctive relief more readily in doubtful cases, as for example, against the use of the defendant's own name to the injury of the plaintiff's business. *International Silver Co. v. Rodgers Bros.*, 136 Fed. 1019. Cf. *Bernhard v. Bernhard*, 156 App. Div. 739, 142 N. Y. Supp. 94. In the principal case, the plaintiff had no property right in the defendants' trademark "P. & M.," the possibility of damage was slight, and there was no colorable imitation with intent to take advantage of the plaintiff's good will. Cf. *International Silver Co. v. Rodgers Bros*, *supra*. Balancing all considerations, therefore, in the absence of fraud the resemblance did not seem deceptive enough to justify an injunction.

TRUSTS — POWERS AND OBLIGATIONS OF TRUSTEES — POWER OF COURT TO INTERFERE WITH DISCRETIONARY INVESTMENTS. — Certain funds were given to trustees under a settlement, with power to invest and to vary investments at their discretion among securities of certain classes. The trustees placed some of the funds in a mortgage of leasehold premises on proper valuations. A later valuation revealed depreciation, and the *cestui que trust* on originating summons, without alleging any breach of trust, now asks an inquiry whether the investment should be continued or called in. *Held*, that the inquiry will be granted. *In re D'Epinoix's Settlement*, [1914] 1 Ch. 890.

The extent to which courts will interfere with the discretion of trustees is not definitely settled on the authorities. Of course, if the trustee exercises his discretion fraudulently, or in bad faith, it is clear that the court will step in. *Portland v. Topham*, 11 H. L. Cas. 32. But where the trustee acts with perfect good faith, his discretion will be respected, with certain limitations. Thus it is well settled that courts will not attempt to control a discretion coupled with "uncontrollable authority." *Gisborne v. Gisborne*, L. R. 2 A. C. 300. Nor will they interfere with a simple discretionary power, unconnected with any duty. *In re Courtier*, 34 Ch. D. 136. But if the power or discretion involves a duty, and is meant to be exercised, its execution will be enforced. See *Read v. Patterson*, 44 N. J. Eq. 211, 219; LEWIN, TRUSTS, 12 Eng. ed., p. 766. Such a duty is commonly found in cases where the discretion is construed to cover some merely ministerial act, such as renewing an investment, or in cases where there is a duty to sell or provide maintenance, with discretion as to the time and manner. *Mortimer v. Watts*, 14 Beav. 616; *Re Burrage*, 62 L. T. R. 752; *Ransome v. Burgess*, L. R. 3 Eq. 773. The principal case illustrates a tendency to extend the power of the courts to control discretion, and the decision is to be sustained because of the trustee's duty to the beneficiaries to exercise sound judgment concerning investments, in spite of the discretion vested in him.

TRUSTS — RESULTING TRUSTS — DISTRIBUTION AMONG SUBSCRIBERS TO A FUND RAISED BY SUBSCRIPTION. — An unexpended balance of the fund raised for the relief of Balkan War sufferers was left in the hands of the British Red Cross Society at the termination of the war. An originating summons was issued to determine whether it should be divided among the subscribers in proportion to their subscriptions, or whether the last subscribers should be paid in full. *Held*, that it should be divided among all the subscribers in

proportion to their subscriptions, irrespective of date. *In re British Red Cross Balkan Fund*, [1914] 2 Ch. 419.

For a discussion of the principles involved, with particular reference to the bearing of the rule in *Clayton's Case* on the question, see NOTES, p. 193.

WAR — PRIZE — CAPTURE: RIGHTS OF NEUTRAL MORTGAGEES AND SHAREHOLDERS. — In a suit for the condemnation of a German steamship captured while flying the German flag by a British warship, claims were presented by neutral mortgagees and by British and neutral shareholders in the German company which owned the vessel. *Held*, that these claims will not be recognized. *The Marie Glaeser*, 137 L. T. J. 468, 49 L. J. 545 (Prize Court).

In time of war a vessel is often regarded as having a character distinct from that of its owners. Thus, under the Anglo-American doctrine which for purposes of maritime capture makes trade domicile in war rather than political nationality the test of enemy character, the ships of a citizen engaged in trade in enemy country, and *a fortiori* when the enterprise is incorporated there, are treated as enemy ships. *The Friendschaft*, 4 Wheat. (U. S.) 105. See *The Portland*, 3 C. Rob. 41, 42, 44; 2 WESTLAKE, INTERNATIONAL LAW, 2 ed., p. 164. Even where this trade domicile in war is not recognized, an increasing tendency to emphasize the nationality of the flag carried produces a like result through the personification of the vessel itself. See 2 WESTLAKE, INTERNATIONAL LAW, 2 ed., p. 169. The flag's lawful use is symbolical of a definite commitment to the protection of one nation. If such protection fails, the political character of its owner is rightly of no avail. *The Dankebaar Afrikaan*, 1 C. Rob. 107. In the principal case, therefore, the shareholders must lose on any theory. The rights of the mortgagees are also properly disregarded, as are the claims of all lienholders, for however slight may be their power to determine the vessel's flag, they have accepted it and enlisted its protection. *The Hampton*, 5 Wall. (U. S.) 372; *The Battle*, 6 Wall. (U. S.) 498; *The Nigretia*, Takahashi, International Law, p. 551; *The Tobago*, 5 C. Rob. 218. Possibly the most fundamental explanation of all is the vital policy against having a prospective prize snatched away because of an unsuspected lien. For otherwise there would be a dearth of captures.

WILLS — EXECUTION — ATTESTATION: WHAT IS ATTESTED UNDER STATUTE OF FRAUDS. — The testator, after signing the instrument, presented it to the attesting witnesses as his will, but kept it so folded that they had no opportunity to see his signature. The Massachusetts statute was similar to the Statute of Frauds, and provided that a will must be signed by the testator and "attested and subscribed in his presence by three or more competent witnesses." *Held*, that the will is not properly attested. *Nunn v. Ehlert*, 106 N. E. 163 (Mass.).

This decision settles the Massachusetts law in accord with a *dictum* delivered by Mr. Justice Gray. See *Chase v. Kittredge*, 11 All. (Mass.) 49, 63. Most authorities, however, in jurisdictions where statutes similar to the Statute of Frauds govern testamentary disposition, have reached the opposite result, on the ground that the statute does not require that the signature of the testator be attested, but merely that the will be attested as the testator's act. *Ellis v. Smith*, 1 Ves. Jr. 11; *White v. Trustees of the British Museum*, 6 Bing. 310; *Dougherty v. Crandall*, 168 Mich. 281, 134 N. W. 24. Under the Wills Act it is required that the signature be "made or acknowledged by the testator in the presence of two or more witnesses." 1 Vict. c. 26, § 9. With such a provision it seems clear that the signature must be attested, and accordingly it has been held that if the witnesses have no opportunity to see the signature, as for example, if it is covered by a blotter, the instrument is not properly executed. *In the Goods of Gunstan*, 7 P. D. 102. Cf. *Daintree v.*